

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SUNDANCE, INC. and
MERLOT TARPAULIN AND
SIDEKIT MANUFACTURING CO., INC.,

Plaintiffs,

vs.

Case No. 02-73543

DEMONTE FABRICATING LTD. and
QUICK DRAW TARPAULIN SYSTEMS, INC.,

HON. AVERN COHN

Defendants.

**ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION OF
MEMORANDUM AND ORDER GRANTING PLAINTIFFS' MOTION FOR JUDGMENT
AS A MATTER OF LAW OR FOR A NEW TRIAL**¹

I.

This is a patent case tried to a jury. Plaintiffs Sundance, Inc. and Merlot Tarpaulin and Sidekit Manufacturing Company, Inc. (collectively, Sundance), holder of U.S. Patent No. 5,026,109 (the '109 patent) covering a Segmented Cover System, sued DeMonte Fabricating, Ltd. and Quick Draw Tarpaulin Systems Inc. (collectively, DeMonte) for infringement of the '109 patent.

The case was tried to a jury. The jury found the patent invalid and infringed.

Sundance filed a motion for judgment as a matter of law, or in the alternative, for a new trial on the finding of validity. The Court granted the motion for judgment as a

¹Although the Court stated that it would set this matter for hearing, see Scheduling Order filed November 27, 2006, upon review of the parties' papers, oral argument is not necessary. See E.D. Mich. LR 7.1(e)(2).

matter of law, finding the '109 patent valid. See Memorandum and Order Granting Plaintiffs' motion for Judgment as a Matter of Law or for a New Trial, filed September 20, 2006.

Before the Court is DeMonte's motion for reconsideration. For the reasons that follow, the motion is DENIED.

II.

E.D. Mich LR 7.1(g) governs motions for reconsideration, providing in relevant part:

Generally, and without restricting the court's discretion, the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by implication. The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case.

E.D. Mich. LR 7.1(g)(3).

DeMonte raises six grounds in its motion. As explained in Sundance's response,² all of these issues were previously raised and rejected by the Court, expressly or by reasonable implication, in granting Sundance's motion for judgment as a matter of law. The issue of validity has been fully vetted in this Court and before the Patent Office, and all of DeMonte's arguments against validity have been rejected. DeMonte's motion is nothing more than another attempt to argue validity. As such, reconsideration is neither warranted nor appropriate.

In its reply brief, DeMonte suggests that Sundance did not move for a directed

²Ordinarily, no response to a motion for reconsideration is required. However, the Court requested a response in order to have a fully developed record.

verdict at the close of the proofs in such a way so as to adequately preserve its ability to raise the validity issue in a motion for judgment as a matter of law. DeMonte says that Sundance's motion lacked the requisite specificity as to the law and facts to support the motion. This argument lacks merit. First, DeMonte never raised this argument in response to Sundance's motion for judgment as a matter of law. Second, although the transcript exchange regarding Sundance's motion for a directed verdict is brief, there is no question that DeMonte at all times has been aware of the legal and factual basis for Sundance's validity argument. This is particularly so given the protracted reexamination proceedings before the Patent Office.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: December 12, 2006

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, December 12, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160